No. 21,909

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SONORA SUNDRY SALES, INC., d/b/a VALUE GIANT, RESPONDENT

On Petition for Enforcement of an Order of the National Labor Relations Board

---

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

MARCEL MALLET-PREVOST,
Assistant General Counsel,

WARREN M. DAVISON,
ROBERT S. HILLMAN,
Attorneys,

National Labor Relations Board.

INDEX

AUTHORITIES CITED

Cases:

Cases—Continued Page

Statute: Page

In the United States Court of Appeals
for the Ninth Circuit

No. 21,909

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SONORA SUNDRY SALES, INC., d/b/a VALUE GIANT,
RESPONDENT

On Petition for Enforcement of an Order of the National Labor Relations Board

---

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon petition of the National Labor Relations Board to enforce its order issued against Sonora Sundry Sales, Inc., d/b/a Value Giant on November 1, 1966. The Board's decision and order (R. 38)[1] are reported at 161 NLRB No.

---

[1] References to the pleadings, decision and order of the Board, the Trial Examiner's recommended decision and order and other papers reproduced as Volume I, Pleadings, are designated "R." References to portions of the stenographic

53. This Court has jurisdiction under Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, *et seq.*), the unfair labor practices having occurred in Sonora, California, within this judicial circuit.

STATEMENT OF THE CASE

I. The Board's Findings of Fact

Briefly, the Board found that respondent violated Section 8(a)(1) of the Act by threatening its employees that execution of a union contract would result in decreased wage rates. The Board also found that respondent refused to recognize and bargain with the Union [2] which represented a majority of the employees in an appropriate unit, in violation of Section 8(a)(5) and (1) of the Act. The facts are as follows:

On May 27, 1965, the Company opened a retail store in Sonora, California (R. 14; Tr. 179). Between June 3 and June 8, the Union solicited and obtained membership applications from 8 of the 12 store employees (R. 14; Tr. 9-10, 15-17)[3] and, on June 9, re-

---

transcript reproduced pursuant to the Rules of This Court are designated "Tr." "G.C. Exh." refers to the General Counsel's exhibits. "R. Exh." refers to respondent's exhibits. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

[2] Retail Clerks Union Local No. 588, Retail Clerks International Association, AFL-CIO.

[3] The Union obtained 11 authorization cards, of which 3 (G.C. Exhs. 9, 12 and 16) were signed by employees who were no longer in the unit on June 9, the critical date.

quested recognition as bargaining representative in an appropriate unit (R. 14; Tr. 19, 193-194).

The Company first learned of the Union campaign on June 5, when an employee informed Store Manager W. H. Finch that he had signed a membership application (R. 14; Tr. 214). Finch then telephoned Company President Paul Kase and passed on the information. Kase told Finch that he would send him copies of a memorandum and ballots for distribution to the employees (R. 14; Tr. 215).

On June 7, Finch called the employees of the store together for an orientation meeting at which he reviewed matters such as customer relations and employee benefits (R. 14; Tr. 86, 212-213). During the meeting, an employee inquired about the drug industry contract that a Union representative was showing employees. Finch said that this agreement did not apply to the Sonora store as the store did not have a prescription pharmacy. He told the employees that the only contract relevant to this store was a variety store contract and that the starting wage in the variety store contract was less than the employees were currently receiving (R. 14; Tr. 86-88, 90-91).

On June 9, Finch received the memoranda and ballots from Kase and distributed a copy of each to employees working that day, telling them that the Company would like them to mark the ballots and place them on Finch's desk, but that it was not mandatory. Other employees received the same ballots and information the next day, June 10. (R. 14, 4; Tr. 178-181). The memorandum to employees was from Com-

pany President Kase and asked the employees to indicate their "opinion concerning this matter" on the ballot. It explained that the store would not fall under the "Drug Industry" contract, which Union representatives have been circulating, because the store did not have a prescription pharmacy (R. 15; R. Exh. 6). The ballot stated that the Company doubted that employees "would want us to recognize the union unless you voted for the Union in a secret ballot election," and asked the employees not to choose whether or not they wanted a union, but whether they wanted a secret ballot election or recognition on the basis of a card check (R. 15-16; R. Exh. 5). Twelve ballots were returned to Finch's desk on June 9 and 10, eleven having been marked for a "secret ballot election" and the twelfth being unmarked (R. 16; Tr. 181-183). Finch kept the ballots until Saturday, June 12, when he turned them over to Retail Supervisor Russell Robinson (R. 16; Tr. 183).

Meanwhile, on the afternoon of June 9, Union representatives Jerry Turner and Ray Mierly visited Finch (R. 16, Tr. 17). Turner told Finch that the Union had organized the store's employees and was now demanding recognition as bargaining agent (R. 16; Tr. 19). He handed Finch a demand letter (G.C. Exh. 2) and a "Recognition Agreement" (G.C. Exh. 3) by which the Company, having examined the cards, might recognize the Union and agree to bargain collectively (R. 16-17; Tr. 18-19). Finch asked for proof of Turner's claim to represent the employees and Turner handed him eleven signed authoriza-

tion cards (G.C. Exh. 8-18),[4] to which Finch replied that it appeared the Union had the employees signed up (R. 17; Tr. 19). Finch, however, questioned his own authority to sign the documents and decided to call the Company's main office in San Francisco (R. 17; Tr. 195-196). He was unable to contact anyone in authority, but asked Paul Kase's secretary to contact an attorney (R. 17; 197-200). Finch then re-read the documents and, after acknowledging that the Union had a majority, he and Turner signed the "Recognition Agreement" (R. 17; Tr. 20-21). Turner handed the agreement to Mierly, who left (R. 17; Tr. 21, 371).

A short time later Finch received a telephone call from Company attorney Albert Kesseler. After Finch had told Kesseler about the visit and read the documents over the phone, Kesseler told Finch not to sign any documents (R. 17; Tr. 115-116). Kesseler then spoke to Turner and told him that Finch was not to sign anything (R. 17; Tr. 117). Kesseler, however, never questioned the Union's majority status. When Turner hung up, he asked Finch to sign another document (G.C. Exh. 4) acknowledging that Finch had examined authorization cards signed by a majority of the employees. Finch signed as requested (R. 17; Tr. 22).

On June 12, 1965, Russell Robinson, retail supervisor of Ames Mercantile Company, Inc., of which respondent is a subsidiary, came to Sonora to speak to the store employees (R. 17; Tr. 150). Robinson told

---

[4] See note 3, *supra*.

the employees again that the Company would not sign a "drug contract," because there was no prescription counter and that the store would most likely be under a "discount" contract (R. 18; Tr. 67, 153-154). He stated that the starting wage under the discount store was $1.35 per hour, lower than the $1.40 per hour wage the employees were currently receiving (R. 18; Tr. 153). An employee inquired about the $1.50 wage rate he had expected to receive when the store opened, but Robinson explained that the $1.50 rate did not go into effect until a later period. He added that if the store was under a union contract, "it would take [the employees] a longer period of time to build up to top pay than it would if [they] weren't union" (R. 18; Tr. 67-69, 76, 142).

On June 14, employees David Tingle and Jayne Casler composed a letter demanding the return of their membership applications and secret ballot procedures. The letter was signed by nine employees, six of who had signed authorization cards, and was sent to the Union, with a copy later sent to the Company (R. 18; Tr. 13-14, 353-355, R. Exh. 1).

On June 15, the Company informed the Union by letter that "the matter of the union situation in our Value Giant Store in Sonora is currently being discussed with our Attorneys. We will contact you later." (R. 18; G.C. Exh. 5). The Union answered on June 21, requesting bargaining sessions on specified dates in the immediate future (R. 18-19; G.C. Exh. 6).

On July 1, the Union filed the refusal to bargain charge in the instant case (R. 19). On July 7, Kase wrote to the Union that the Company had appointed Ray Vetterlein of Labor Relations Associates to represent it in this matter and suggested that the Union contact him (R. 19; G.C. Exh. 7). Five days later, on July 12, Vetterlein, while speaking to Union Secretary Alexander, told him that the "recognition problem" would have to be solved before the Company would bargain with the Union (R. 19; Tr. 323-325).

On July 18, the Company distributed a memorandum with employees' paychecks, notifying them that an across-the-board raise in wage rates had gone into effect July 1, along with an increase in health insurance coverage. The memorandum also thanked employees for their efforts and assured that the Company would continue to provide wage and benefits "equal to or better than the prevailing industry rates" (R. 19; Tr. 208-209; G.C. Exh. 20). A wage raise from $1.40 to $1.45 went into effect at the Sonora store pursuant to the memorandum, but the other raises mentioned in it did not, because of the pendency of the instant case (R. 19; Tr. 209-211).

II. The Board's Conclusions and Order

Upon the foregoing facts the Board found that the Company violated Section 8(a)(1) of the Act by threatening employees that if they joined the Union it would take them longer to build up to top pay than without the union. The Board further found that the Company violated Section 8(a)(5) and (1) by refusing to recognize and bargain with the Union.

The Board ordered the Company to cease and desist from the unfair labor practices found. Affirmatively, the Board's order requires the Company, upon request, to bargain collectively with the Union, and to post the customary notice (R. 38-45).[5]

ARGUMENT

I. The Board Properly Found That the Company Violated Section 8(a)(1) of the Act by Threatening Employees With Lower Wages If They Selected the Union as Their Bargaining Representative

As set forth in the Statement, three days after the Union's presentation of the authorization cards to Store Manager Finch, the Company's retail supervisor, Robinson, told the employees that the Company would not accept a "drug industry" contract, and that, under the contract the Company would accept, it would take the employees longer to build up to top pay than without a union. On these facts the Board found that Robinson threatened economic reprisal and thereby exceeded legitimate persuasive efforts, thus

---

[5] The Trial Examiner recommended dismissal of the complaint (R. 22). However, there is no conflict between the Examiner and the Board with respect to "evidence supporting [the Board's] conclusion." *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 496. As the courts have recognized, the Board is the decision making authority empowered to draw inferences and legal conclusions from the underlying facts found by the Examiner, and the Examiner's contrary conclusions are entitled to no special weight. *N.L.R.B.* v. *A.P.W. Products Co.*, 316 F. 2d 899, 903-904 (C.A. 2); *Oil Chemical and Atomic Workers, etc.* v. *N.L.R.B.*, 362 F. 2d 943, 945-946 (C.A.D.C.).

engaging in interference, restraint and coercion as defined by Section 8(a)(1) of the Act.

Robinson's speech was a clear attempt by the Company to dissuade the employees' from their Union allegiance by, in effect, threatening to decrease their wages. He specifically indicated that employees, if they selected the Union to represent them, would not obtain pay raises they would otherwise have received. The Board and the courts have long held that threats that unionization will result in wage reductions or loss of benefits violate the Act. *Surprenant Mfg. Co.* v. *N.L.R.B.*, 341 F. 2d 756 (C.A. 6); *N.L.R.B.* v. *Stanton Enterprises, Inc.*, 351 F. 2d 261, 263-264 (C.A. 4); *N.L.R.B.* v. *Marsh Supermarkets, Inc.*, 327 F. 2d 109, 111 (C.A. 7), cert. denied, 377 U.S. 944; Cf. *N.L.R.B.* v. *Ambrose Distributing Company*, 358 F. 2d 319 (C.A. 9), cert. denied, 385 U.S. 838.

The Company contended before the Board that Robinson's statement constituted permissible argument in support of management's opposition to the advent of a union. However, "[w]hether an employer has employed language which is coercive in its effect is a question essentially for the specialized experience of the N.L.R.B." *Daniel Construction Co.* v. *N.L.R.B.*, 341 F. 2d 805, 810, 811 (C.A. 4), cert. denied, 382 U.S. 831. As the Sixth Circuit has stated:

> [I]f the inference or conclusion found by the Board that the statements constituted a threat is a reasonable one, which it was permissible for the Board to make, its conclusion will not be set aside on review, even though a different infer-

ence or conclusion may seem more plausible and reasonable to us. *Surprenant Mfg. Co.* v. *N.L.R.B.*, 341 F. 2d 756, 760 (C.A. 6).

In the instant case, Robinson sounded the "discouraging warning" that if the Union were to come in, the employees' wages would be adversely affected and the Board reasonably inferred that the employees would take the statement as a threat of economic reprisal. See *Hendrix Manufacturing Co.* v. *N.L.R.B.*, 321 F. 2d 100, 105 (C.A. 5). The Board's finding in this regard was a permissible one under the circumstances and, accordingly, is entitled to affirmance on review. *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 488.

II. Substantial Evidence on the Record as a Whole Supports the Board's Findings That the Company Violated Section 8(a)(5) of the Act by Refusing to Bargain With the Union

Section 8(a)(5) of the Act requires an employer "to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a)." That section provides that "Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit * * *." Although under Section 9(c)(1) the Board conducts elections to determine representative status, it has long been settled that such status may be shown by other means. See, *United Mine Workers* v. *Arkansas Oak Flooring Co.*, 351 U.S. 62, 71-72. Thus, when a majority of employees in an appropriate unit sign

union authorization cards, an employer violates Section 8(a)(5) if he insists on an election and refuses to recognize and bargain with the union, unless such refusal is motivated by a good faith doubt of the union's majority status. *Retail Clerks Union, Local 1179* v. *N.L.R.B. (John P. Serpa, Inc.)*, 376 F. 2d 186, 190 (C.A. 9); *N.L.R.B.* v. *Security Plating Co.*, 356 F. 2d 725, 726-727 (C.A. 9); *N.L.R.B.* v. *Hyde*, 339 F. 2d 568, 570 (C.A. 9); *Sakrete of Northern California, Inc.* v. *N.L.R.B.*, 332 F. 2d 902, 908-909 (C.A. 9), cert. denied, 379 U.S. 961; *Snow* v. *N.L.R.B.*, 308 F. 2d 687, 691, 694 (C.A. 9); *N.L.R.B.*, v. *Trimfit of California, Inc.*, 211 F. 2d 206, 209-210 (C.A. 9); *Joy Silk Mills* v. *N.L.R.B.*, 185 F. 2d 732, 741 (C.A.D.C.), cert. denied, 341 U.S. 914. We show below that respondent's refusal to bargain was not motivated by a good faith doubt of the Union's majority and was, therefore, unlawful.

Thus, the Union presented eight signed authorization cards [6] to Store Manager Finch on June 9. Finch examined the cards and acknowledged the Union's majority status among the 12 employees of the store. Finch then signed a "Recognition Agreement" recognizing the Union's majority status and agreeing to bargain collectively with the Union (G.C. Exh. 3), as well as a document acknowledging that he had exam-

---

[6] Each authorization card recited, *inter alia*, that the signer "hereby authorize[s] RETAIL CLERKS INTERNATIONAL ASSOCIATION to represent me for purposes of collective bargaining and handling of grievances, either directly or through such local union as it may duly designate" (G.C. Exh. 8-18).

ined proof of the Union's majority status (G.C. Exh. 4). Thereafter, respondent refused to bargain with the Union despite the latter's request.

These facts, we submit, establish respondent's violation of its bargaining obligation. *N.L.R.B.* v. *Mutual Industries, Inc.*, —— F. 2d —— (C.A. 9), decided October 6, 1967, 66 LRRM 2359, 2360; *Snow* v. *N.L.R.B.*, *supra; Retail Clerks Union, Local 1179* v. *N.L.R.B. (Serpa)*, *supra.* In *Serpa*, five of the employer's seven employees signed union authorization cards. Union officials then came to the employer's general manager, Peri, placed the authorization cards on his desk, stated that the Union represented a majority of the employees, and requested that Peri sign a "recognition agreement". Peri expressed no doubt as to the validity of the authorization cards but said that he wanted to call his lawyer and that he would contact the union the next day, Saturday. Although he talked to his lawyer on Saturday, Peri did not call the union that day or thereafter. Meanwhile, following the demand for recognition, two of the employees withdrew their bargaining authorizations, without any encouragement from the employer. The Court held that, on these facts, a violation of Section 8(a)(5) had been established. The Court noted that at no time did Peri challenge the authenticity of the cards; to the contrary, he was given an opportunity to check them against his payroll records but declined to do so, apparently because he had no objection to them. Thus, said the Court, "when the employer makes his own examination of the authorization cards and is convinced of their identity and validity, * * * a subse-

quent refusal to recognize the Union is adequate affirmative evidence of a lack of good faith doubt as to majority status" (376 F. 2d at 190). Finally, the Court held that an employer may not delay recognition of a union after it is convinced that the union enjoys majority status among the employees. In *Serpa*, the employer committed no coercive acts in order to destroy the union's majority but merely used "delaying tactics * * * with the hope that the Union 'would just go away' ", conduct "designed to gain time for the employees to reconsider their decision to have the Union as their bargaining representative" (376 F. 2d at 191). And, concluded the Court, "While there was no evidence to indicate active impropriety on the part of [the employer], its undue delay in answering the Union's request for bargaining is inconsistent with the policy and purpose of Section 8(a)(5) of the Act and evidences employer rejection of collective bargaining principles" (*ibid.*).

The case at bar is, we submit, far stronger than *Serpa*. For here, the Company's representative not only was afforded an opportunity to examine the cards but he in fact examined them, acknowledged their validity and the Union's majority status, and signed a recognition agreement. The bargaining obligation matured at that point (*Snow* v. *N.L.R.B.*, *supra*, 308 F. 2d at 694; *N.L.R.B.* v. *Kellogg's Inc.*, 347 F. 2d 219, 220 (C.A. 9)), and may not be avoided by the defenses respondent asserted before the Board and to which we now turn.

First, argues respondent, the authorization cards —which are clear and unequivocal on their face (see

n. 6, *supra*)—are invalid because Union representative Turner told the employees that their cards would not be shown to their employer. Accordingly, says respondent, the Union's showing the cards to Store Manager Finch was contrary to what Turner had told the employees and thus rendered the cards invalid. This argument misconceives the applicable law. The Board and courts have held that valid authorization cards may be invalidated where they are procured by misrepresentations, most frequently the solicitor's assurance that the cards would be used only to support the union's petition for a Board election. Such misrepresentations render authorization cards invalid because it cannot be said that the signers, by executing cards in these circumstances, "clearly manifested an intention to designate the Union as their bargaining representative." *Englewood Lumber Company*, 130 NLRB 394, 395. See also, *N.L.R.B.* v. *Gotham Shoe Mfg. Co.*, 359 F. 2d 684, 686, (C.A. 2); *Matthews & Co.* v. *N.L.R.B.*, 354 F. 2d 432, 436 *et seq.* (C.A. 8), cert. denied, 384 U.S. 1002; *Bauer Welding & Metal Fabricators* v. *N.L.R.B.*, 358 F. 2d 766 (C.A. 8). What Turner told the employees here—that the authorization cards would not be shown to their employer—was not intended to induce the signing of cards by employees who would not otherwise sign a card because they did not want a union to represent them. To the contrary, all Turner's statement could do would be to allay the employees' fears that their employer would learn of their union adherence and take reprisals against them. This bears no relationship whatever to the signer's actual intent—the designation of the Union as his collective

bargaining representative. *Englewood Lumber Company, supra;* cf. *N.L.R.B.* v. *Hyde, supra,* 339 F. 2d at 571. Before the Board, respondent conceded that the cards might properly have been used to support a recognition demand based on a third-party check (cf. *Snow* v. *N.L.R.B.*, 308 F. 2d 687 (C.A. 9)) but not a card check by the employer himself. It is clear, however, that the "difference in the means of checking a union's majority is of no significance; an employer's check certainly is as reliable as that by a third party." *Jem Mfg., Inc.*, 156 NLRB 643, 645, citing *Kellogg Mills,* 147 NLRB 342, enforced, 347 F. 2d 219 (C.A. 9); accord, *Retail Clerks Union, Local 1179* v. *N.L.R.B., supra,* 376 F. 2d at 190 and n. 6.

Next, argues respondent, Finch had no authority to recognize the Union. The record shows, however, that Finch, as manager of the Sonora store, was the Company's highest official there and performed his job with minimal supervision from respondent's home office in San Francisco.[7] He had the authority to buy merchandise and to bind the Company by signing purchase orders (Tr. 239-240). Finch hired at least some of the employees who were working at the store at the time of the demand (Tr. 65, 141), and had the authority to give them raises (Tr. 274-275). In the light of his almost autonomous position in running the Sonora operation, it defies credulity to suggest

---

[7] Sonora is some 110 miles from respondent's home office in San Francisco. Finch's immediate superior, Hughes, whose office is in San Francisco, visits the Sonora store only sporadically; as Finch testified, "He may come every week or it may be a month before he comes" (Tr. 239).

that he did not have the authority to examine the authorization cards, verify the signatures and recognize that the cards represented a majority of the employees. Surely, if any good faith doubt of the majority existed Finch would have had the knowledge on which that doubt could be based, as he was the only management official regularly at the store and thus would have the greatest knowledge of the Union campaign in that unit. That Finch had the authority to recognize the Union is demonstrated by the fact that after he reported the Union activity to the Company he was authorized to speak to the employees on June 7 and to conduct the employee poll. To hold that Finch possessed all of the authorities listed above, but not the authority to recognize the Union, "would provide a simple means for evading the Act by a division of corporate personnel functions." *Allegheny Pepsi-Cola Bottling Co.* v. *N.L.R.B.*, 312 F. 2d 529, 531 (C.A. 3). Moreover, the Company never disavowed Finch's action until the instant proceeding and offered no evidence at the hearing, other than attorney Kesseler's telephone conversation, that Finch lacked the requisite authority (R. 41). Respondent's defense of a lack of authority is, accordingly, without merit. See *Permacold Industries, Inc.*, 147 NLRB 885, 886; *N.L.R.B.* v. *Quaker City Life Ins. Co.*, 319 F. 2d 690, 692-693 (C.A. 4).

Finally, argues respondent, it was entitled to withhold recognition from the Union because it entertained a good faith doubt of the Union's majority status. It is settled law, however, that "when an employer makes his own examination of the authoriza-

tion cards and is convinced of their identity and validity, * * * a subsequent refusal to recognize the union is adequate affirmative evidence of a lack of a good faith doubt as to majority status." *Retail Clerks Union, Local 1179* v. *N.L.R.B.*, *supra*, 376 F. 2d at 190. As Finch examined the cards, acknowledged the Union's majority status, and executed the recognition agreement, respondent's assertion of a good faith doubt must fail. *N.L.R.B.* v. *Mutual Industries, Inc.*, *supra*, 66 LRRM 2360; cf. *N.L.R.B.* v. *Hyde*, *supra*, 339 F. 2d at 571 (C.A. 9). Indeed, the Company made no effort to satisfy its bargaining obligation. Despite the Union's demands for bargaining sessions on specific dates in its letter of June 21, no meetings were arranged. Instead, respondent embarked on a course of conduct which belies any contention that its refusal to bargain was motivated by good faith. The Company made no effort to speak with Union officials or to challenge their claim of majority even though the Union demanded bargaining sessions. Kesseler, in his conversation with Turner and Finch on the telephone, expressed no doubt of the Union majority (Tr. 131-133). Neither did President Kase in his temporizing letters of June 15 and July 7. In fact, the first notice from the Company that it would claim a doubt of majority came on July 12, over a month after the bargaining demand, when Vetterlein told Alexander that the recognition problem would have to be solved before they could get to bargaining.

Nor may respondent defend its refusal to bargain by reliance on the poll conducted by Finch or on the letter it received from some of the employees. With

respect to the poll (*supra*, pp. 3-4), the record shows that the ballots were not all distributed and returned to Finch until June 10, the day *after* the critical date, i.e., the date the recognition agreement was signed. Moreover, it was not until June 14, five days after the critical date and two days after Robinson's speech about comparative wage rates with or without the Union, that the so-called "disavowal letter" was sent to the Union. The law is clear that

> . . . . an employer may not set up as a justification for its refusal to bargain with a union the defection of union members which it had itself induced by unfair labor practices, even though the consequence is that the union no longer has the support of a majority. In such circumstances the employer will be required to bargain notwithstanding the union does not presently have a majority.

N.L.R.B. v. *Idaho Egg Producers, Inc.*, 229 F. 2d 821, 823 (C.A. 9). And the result would be the same even if the "disavowal letter" were not the product of the Company's 8(a)(1) violation, for coercive activities undertaken by an employer to dissipate a union's majority status "is not the only kind of employer conduct the Act was designed to prevent." *Retail Clerks Union, Local 1179* v. *N.L.R.B.*, *supra*, 376 F. 2d at 191. For it is just as "inconsistent with the policy and purpose of section 8(a)(5) of the Act" for an employer to refuse recognition in order to "gain time for the employees to reconsider their decision to have the Union as their bargaining representative." (*ibid.*).

See also, *Sakrete of Northern California, Inc.* v. *N.L.R.B.*, *supra*, 332 F. 2d at 909.

CONCLUSION

For the reasons stated, the Board's order should be enforced in full.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

MARCEL MALLET-PREVOST,
Assistant General Counsel,

WARREN M. DAVISON,
ROBERT S. HILLMAN,
Attorneys,

National Labor Relations Board.

November 1967.

CERTIFICATE

The undersigned certifies that he has examined the provisions of Rules 18 and 19 of this Court, and in his opinion the tendered brief conforms to all requirements.

MARCEL MALLET-PREVOST
Assistant General Counsel
National Labor Relations Board

APPENDIX A

Pursuant to Rule 18.2(F) of the Rules of the Court

BOARD'S EXHIBITS

No.	Identified	Received
1-A through 1-L	4	5
2	5	5
3	6	6
4	7	7
5	7	7
6	8	8
7	8	8
8 through 18	9	9
19	71	71
20	72	72
21	331	332

COMPANY'S EXHIBITS

1	14	14
2	29	30
3	58	58
4	119	119
5-A through 5-K	158	185
6	178	185

UNION'S EXHIBITS

1	279	280

APPENDIX B

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Unfair Labor Practices

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; * * *

* * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * *

☆ U. S. GOVERNMENT PRINTING OFFICE; 1967 281357 377